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Order 99-3-3



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 3<sup>rd</sup> day of March, 1999

Served: March 8, 1999

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Agreement adopted by the Tariff :  
Coordinating Conferences of the :  
International Air Transport Association : Docket OST-99-4972  
relating to transatlantic cargo rates :  
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ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (the Code) and Part 303 of the Department's regulations. The agreement was adopted by mail vote.<sup>1/</sup>

The agreement introduces into the U.S.-Europe "Alliance" countries rate structure approved last June in Order 98-6-34 (June 29, 1998), small package rates for shipments between the U.S. and Belgium, Germany, Sweden and Switzerland. The weight of each such shipment must not exceed 32 kg. (approximately 70 lbs.), the sum of its dimensions must not exceed 90 inches, with a maximum dimension for any one side set at 48 inches, and its value must not exceed \$968 for shipments from the U.S.<sup>2/</sup> All charges for such shipments must be prepaid, and if the shipment fails to move on the flight designated by the shipper, the carrier will refund an amount not to exceed the difference between the premium small package rate and the otherwise applicable IATA general cargo rate.

<sup>1/</sup> IATA memorandum CTC12 Telex Mail Vote 983, filed with the Department on January 6, 1999.

<sup>2/</sup> The agreement establishes comparable maximum values from each Alliance country in local currency.

We will approve the agreement. Based on the information submitted and other relevant material, we conclude that the agreement, as conditioned below, will not result in rates that are unlawful or injurious to competition in the markets at issue. The criteria established for such shipments in these markets appear to be in line with those established by IATA in other, similar markets. Moreover, since the facility is proposed for only four countries and caters to a comparatively small segment of the total market for cargo transportation, we expect that it should have a minimal impact on U.S. carrier revenues. To the extent that this resolution facilitates small package services in the markets at issue, it will provide an additional benefit for shippers.

However, our approval of the proposed small package rates will be subject to the conditions that we routinely attach to our approval of these IATA cargo rate agreements: that all rates and charges to/from U.S. points are maximums with carriers free to implement rates and/or charges in the marketplace that are below those established by the agreement. In addition, we will attach our condition regarding the valuation of these shipments for determining carrier liability that we originally imposed in Order 78-7-115, July 21, 1978.

Pursuant to authority assigned by the Department's Regulations, 14 CFR 385.13:

1. We do not find the following resolution, which is incorporated in the agreement in Docket OST-99-4972 and which has direct application in foreign air transportation as defined by the Code, to be adverse to the public interest or in violation of the Code, provided further that (a) notwithstanding any provisions of this resolution or any other resolutions, all rates and charges to/from U.S. points established pursuant to this resolution shall be maximums; and (b) each and every carrier operating pursuant to this resolution may implement rates and charges below those established by this resolution:

<u>Docket</u>	<u>IATA Resolution</u>
OST-99-4972	CTC12 (Mail 983) 50lff

Provided that: The limitations on maximum value established in Resolution 50lff shall not apply to valuations affecting determination of carrier liability.

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is

mandatory under section 41308 of the Code.

Order 85-5-32 contemplates that the products of the fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-99-4972 as set forth in finding paragraph 1 above, subject, where applicable, to the conditions imposed therein.

**ACCORDINGLY,**

We approve and grant antitrust immunity to the agreement contained in Docket OST-99-4972, as set forth in finding paragraph one above, subject, where applicable, to the conditions imposed therein.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Department of Transportation upon expiration of the above period, unless within such period a petition for review is filed or the Assistant Secretary for Policy and International Affairs gives notice that he will review this order on his own motion.

**By:**

Paul L. Gretch  
Director, Office of International Aviation

**(SEAL)**

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